

REMARKS/ARGUMENTS

In the Office action dated October 9, 2008, the examiner objected to claims 14-25 and 29 as allegedly drawn to a non-statutory class of invention. In particular, the examiner asserts that a "system" is "not one of the statutory classes of invention." Office action, page 2. Applicant respectfully traverses this objection.

According to 35 U.S.C. §101, "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter...may obtain a patent therefor." Although, "systems" are not specifically listed in this section, "systems" fall under the machine or manufacture category, and therefore are patentable subject matter. That "systems" are included in a statutory class of invention is further supported by the numerous issued patents claiming them. In fact, in a cursory search of the U.S.P.T.O. online database, nearly 300,000 issued patents were found that include a claim with the phrase, "a system comprising." Some representative examples of the nearly 300,000 issued patents include: 1) U.S. Patent No. 7,328,456 to Szor, et al. (claims 23-27); 2) U.S. Patent No. 7,328,454 to Strickland, et al. (claims 13-15); 3) U.S. Patent No. 7,328,451 to Aaron (claims 1-10); 4) U.S. Patent No. 7,328,446 to Binnig, et al. (claims 28-30); 5) U.S. Patent No. 7,328,442 to Porter (claims 12 and 20); 6) U.S. Patent No. 7,328,437 Donovan, et al. (claims 1-7); 7) U.S. Patent No. 7,328,434 to Swanson, et al. (claims 12-20); 8) U.S. Patent No. 7,328,433 to Tian, et al. (claims 16-22); 9) U.S. Patent No. 7,328,427 to Pullara (claims 1, 2 and 6); and 10) U.S. Patent No. 7,328,415 to Bou-Ghazale, et al. (claims 19-24). Given this wealth of evidence that systems are patentable subject matter, applicant respectfully requests withdrawal of the objection to the claims.

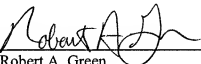
The examiner also rejected claims 14, 15, 18-25 and 29 under 35 U.S.C. §103(a) as allegedly unpatentable over Recktenwald, et al. (U.S. Patent No. 4,745,285). However, the examiner also indicated that claims 16 and 17 would be allowable if rewritten in independent form. Applicant has amended independent claim 14 to recite the limitations of claims 15 and 16, and canceled claims 15 and 16. In particular, applicant has amended claim 14 to recite that the analyzer is operative to quantitatively determine an intensity contribution to the fluorescence

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from each of the plurality of different excitable markers, and that the analyzer uses a linear unmixing operation. Recktenwald fails to teach or suggest such features as admitted by the examiner in indicating that original claim 16 would be allowable. Accordingly, independent claim 14, and all claims dependent therefrom, including claims 17-25 and 29, are allowable over Recktenwald.

Claims 14, 17-25 and 29 now remain pending in this application. By this amendment, applicant has amended claim 14 and canceled claims 1-13, 15 and 16. The amendments find full support in the original specification, claims and drawings, and no new matter is presented. In view of the above amendments and remarks, applicant submits that all of pending claims 14, 17-25 and 29 are in condition for allowance. Applicant therefore respectfully requests reconsideration and a timely indication of allowance. However, if there are any remaining issues that can be addressed by telephone, applicant invites the examiner to contact applicant's counsel at the number indicated below.

Respectfully submitted,
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626/795-9900

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